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U.S. Department of Justice

Immigration and Naturalization Service

OFFICE OF ADMINISTRATIVE APPEALS
425 Eye Street N.W.
ULLB, 3rd Floor
Washington, D.C. 20536

JAN 30 2003

File: [REDACTED] Office: VERMONT SERVICE CENTER

Date:

IN RE: Petitioner:
Beneficiary:

PETITION: Immigrant Petition for Alien Worker as a Multinational Executive or Manager Pursuant to Section 203(b)(1)(C) of the Immigration and Nationality Act, 8 U.S.C. 1153(b)(1)(C)

IN BEHALF OF PETITIONER:

**identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy**

INSTRUCTIONS:

This is the decision in your case. All documents have been returned to the office which originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. 103.5(a)(1)(i).

If you have new or additional information which you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Service where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. Id.

Any motion must be filed with the office which originally decided your case along with a fee of \$110 as required under 8 C.F.R. 103.7.

**FOR THE ASSOCIATE COMMISSIONER,
EXAMINATIONS**

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The immigrant visa petition was approved by the director, Vermont Service Center. On further review of the record, the director determined that the petitioner was not eligible for the benefit sought. Accordingly, the director prepared a notice of his intent to revoke the approval of the preference visa petition and his reasons therefore. The director ultimately revoked the approval of the petition on July 18, 2001 after receiving no rebuttal to the notice of intent to revoke. The matter is now before the Associate Commissioner for Examinations on appeal. The case will be remanded for further consideration.

The regulation at 8 C.F.R. 205.2(d) indicates that revocations of approvals must be appealed within 15 days after the service of the notice of revocation. The record indicates that the notice of revocation was mailed on July 18, 2001. The appeal was filed on August 7, 2001, 20 days after the decision was mailed. Thus, the appeal was not timely filed.

The regulation at 8 C.F.R. 103.3(a)(2)(v)(B)(2) states that, if an untimely appeal meets the requirements of a motion to reopen as described in 8 C.F.R. 103.5(a)(2), the appeal must be treated as a motion, and a decision must be made on the merits of the case.

8 C.F.R. 103.5(a)(2) requires that a motion to reopen state the new facts to be provided in the reopened proceeding, supported by affidavits or other documentary evidence. Review of the record reveals that the notice of intent to revoke was addressed only to the petitioner's original counsel. Counsel for the petitioner has submitted affidavits that the petitioner's original counsel did not receive the notice of the director's intent to revoke the approval of the petition. In addition, counsel states that new counsel for the petitioner had submitted a Form G-28, Notice of Entry of Appearance of Attorney on December 30, 1998 along with the petitioner's response to the director's request for further evidence. Review of the record supports this statement. Counsel states further that the Service sent the actual revocation notice to the petitioner's original counsel rather than the petitioner's new counsel. Counsel finally states that the decision to revoke the petition was forwarded to the petitioner by petitioner's original counsel. We note that the revocation decision was based solely on the ground that the Service had not received a response in rebuttal to the director's notice of intent to revoke the approval of the petition. The petitioner thus, was unaware of the grounds that formed the basis of the director's decision to issue the Notice of Intent to Revoke. This appeal meets the requirements of a motion to reopen. The petition will be remanded to the director for consideration as a motion to reopen.

As the record reveals that the petitioner has not been apprised of the reasons that formed the basis of the director's decision to issue the Notice of Intent to Revoke, the director should re-issue the Notice of Intent to Revoke and provide the petitioner the opportunity to respond.



ORDER: The petition is remanded to the director for further action in accordance with the foregoing.